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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/559,165      | 04/26/2000  | Charles J. Burnett   | 10991753-1          | 1603             |

22878 7590 05/23/2005

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EXAMINER

BARNIE, REXFORD N

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2643

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

11/11

|   |                                      |  |  |
|---|--------------------------------------|--|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | <b>Application No.</b><br>09/559,165 | <b>Applicant(s)</b><br>BURNETT, CHARLES J. |  |
|   | <b>Examiner</b><br>REXFORD N. BARNIE | <b>Art Unit</b><br>2643                    |  |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04/31/05 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached paper.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

*Rexford N. Barnie*  
 REXFORD BARNIE  
 PRIMARY EXAMINER

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed on 04/31/2005 have been fully considered but they are not persuasive.

The applicant argued that the combination fails to teach the claimed subject matter "a processor configured to automatically detect and impedance characteristics of a network and combine data to be transmitted over the network with the set of impedance control value"

The examiner disagrees because first of all, it's known to transmit data by configuring a universal modem to adjust impedance values manually based on location including country where the modem would be used.

The combination as set forth in the rejection of the claimed subject matter teaches that loop DC resistance "impedance" can be determined as part of detecting loop measurements in (see col. 8 lines 54-57 of Rahamim) and according to (see col. 8 lines 26-41), measured values plays a role in the adjustment of parameters to be in compliance with regulatory standards when transmitting data over a network. According to Rahamim signals would be driven on a network loop having electrical characteristics compatible with the country.

Frantz teaches automatically determining impedance of a subscriber loop and correcting for mismatches even though, not measured directly, it's done automatically through a technique involving return loss. The step of 'automatically detecting impedance' is not really restricted to one technique.

Furthermore, for the modem to transmit data, it would have to transmit information using the adjusted impedance control level in order to match that of the network as long as the modem is communicating.

The applicant in (see pages 10-11) argued that the combination including Dahlan fails to teach a processor configured to detect an impedance characteristics of a telephony network to which the communication apparatus is connected.

The examiner disagrees with the applicant, even though, the prior art of record (Dahlan) might be not be certain with regard to automatic detection (see col. 2 lines 23-46), the idea is rendered as PRIOR ART, what he does is start out with an assumption (see col. 3 lines 8-22 and lines 43-54) and if that does not work, then an automatic detection can be made for impedance adjustment.

The applicant argued that the examiner pointed to sections of the applicant's disclosure as prior art which was inaccurate.

The examiner agrees and intended to point to (see page 8 line 21-page 9 line 1).

In summary, the examiner supplemented the teaching of Rahamim to implicitly teach the claimed subject matter.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **REXFORD N BARNIE** whose telephone number is 571-272-7492. The examiner can normally be reached on M-F 9:00-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PRIMARY EXAMINER  
REXFORD BARNIE  
05/18/05

  
REXFORD BARNIE  
PRIMARY EXAMINER